

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIAUNITED STATES OF AMERICA BANK
NATIONAL ASSOCIATION,

Plaintiff,

v.

DAVID R. FOLEY, et al.,

Defendants.

Case No. [23-cv-01029-RS](#)**ORDER REMANDING ACTION**

This is an unlawful detainer action brought in Santa Clara Superior Court and removed here by defendant David R. Foley with the consent of defendant Lisa L. Foley. Foley asserted removal jurisdiction existed based on both the existence of federal questions and diversity of citizenship between the parties. Foley's claim of federal questions, however, was based on the existence of a separate complaint he has filed against US Bank National Association and others involving the same property, which is now pending in this court as Case No. 3:23-cv-00877-VC.¹

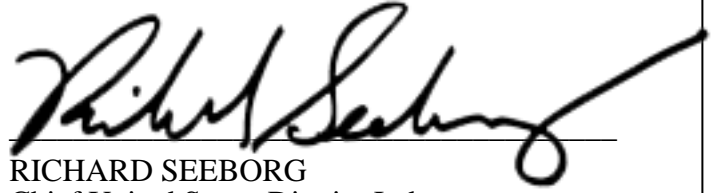
The magistrate judge to which this case was initially assigned upon removal issued an order to show cause that included a clear and detailed explanation of why there is no removal jurisdiction here based on either federal question or diversity. Foley's response to the order to

¹ In Case No. 3:23-cv-00877-VC, Foley filed, but did not properly notice a "motion to consolidate" that case with this one. That motion appears dormant, but is not procedurally appropriate in any event. Foley could have sought to have the two cases related under Civil Local Rule 3-12. In light of the clear lack of jurisdiction over this case, however, it will not be referred for a related case determination.

1 show cause fails to show otherwise.

2 In short, there is no jurisdiction based on federal question because the complaint in this
3 action is based solely on state law. That Foley contends he may have defenses or related
4 affirmative claims against plaintiff arising under federal law is simply not relevant. Furthermore,
5 there is no jurisdiction based on diversity because even assuming the amount in controversy
6 requirement could be satisfied notwithstanding case law to the contrary, 28 U.S.C. § 1441 (b)(2)
7 precludes removal where a defendant is a citizen of the state in which the action was brought.
8 There is no dispute that the Foleys are California citizens, and therefore not entitled to remove on
9 the basis of diversity. This action is remanded to Santa Clara Superior Court.

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11 Dated: March 27, 2023

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14 RICHARD SEEBORG
15 Chief United States District Judge
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United States District Court
Northern District of California